

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg**

CLARKE D PATTERSON,

Petitioner,

v.

Civil Action No. 1:19-CV-135
Judge Klee

RUSSELL MASTON, Superintendent
of SMCC,

Respondent.

ORDER ADOPTING REPORTS AND RECOMMENDATIONS

The above referenced case is before this Court upon the magistrate judge's Reports and Recommendations docketed respectively. See [Docs. 44 & 45]. Therein, the magistrate judge recommends that Respondent's Motion to Dismiss or For Summary Judgment [Doc. 32] be denied, petitioner's unopposed construed motion to stay [Doc. 37] be granted, that the petition be construed as a mixed petition, and that the Clerk place this matter on the inactive docket of the Court pending resolution of petitioner's claims to be raised in state court. See [Doc. 44 a 42]. Furthermore, the magistrate judge recommends that petitioner's Motion for Appointment of Counsel [Doc. 39] be denied, and petitioner's Motion to File Only One Copy [Doc. 40] be granted.

The magistrate judge's second report and recommendation recommends that petitioner's Petition for a Writ of Mandamus [Doc. 43] be denied as being legally frivolous and failing to state a claim upon which relief can be granted and that petitioner's attached Motion for Leave to Proceed *In Forma Pauperis* be denied as moot. See [Doc. 45].

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United States v. Schronce***, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's reports and recommendations.

A *de novo* review of the record indicates that the magistrate judge's reports accurately summarize this case and the applicable law. Accordingly, the magistrate judge's reports and recommendations [Docs. 44 & 45] are **AFFIRMED**. This Court holds the following:

- Respondent's Motion to Dismiss or For Summary Judgment [Doc. 32] is **DENIED**.
- Petitioner's unopposed construed motion to stay [Doc. 37] is **GRANTED**.
- The petition is hereby **CONSTRUED** as a mixed petition.
- Petitioner's Motion for Appointment of Counsel [Doc. 39] is **DENIED**.
- Petitioner's Motion to File Only One Copy [Doc. 40] is **GRANTED**.

- Petitioner's Petition for a Writ of Mandamus [**Doc. 43**] is **DENIED** and his attached Motion for Leave to Proceed *In Forma Pauperis* is **DENIED AS MOOT**.
- Petitioner is hereby **DIRECTED** to file (1) quarterly reports regarding the status of his state habeas and appeals on the unexhausted claims he intends to pursue in his federal § 2254 petition; and (2) a Notice of Exhaustion within thirty (30) days from the date his state court remedies have been fully exhausted. Petitioner must move for reinstatement of this action to the active docket of this Court within thirty (30) days from the date his state court remedies have been exhausted. Petitioner is hereby **ADVISED** that failure to do so could result in dismissal of his present petition.

This Court further **DIRECTS** the Clerk **STAY** this case pending resolution of petitioner's claims to be raised in state court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: September 28, 2021.

/s/ Thomas S. Kleeh

THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE